

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

SEP 16 1998

IN THE MATTER OF:

DOCKET NUMBER: 98-00224

[REDACTED]

COUNSEL: NONE

[REDACTED]

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His disability retirement be set aside and his name be placed back on the Temporary Disability Retired List (TDRL), retroactive to 16 November 1996.

APPLICANT CONTENDS THAT:

He was prematurely removed from the TDRL in 1996 and permanently retired. His condition had not yet stabilized at that time.

In support of his request, the applicant submits medical statements from his attending Air Force physician and counseling psychologist, and a congressional inquiry (Exhibit A).

STATEMENT OF FACTS:

The applicant's Total Active Federal Military Service Date (TAFMSD) is 11 November 1973. He was promoted to the grade of lieutenant colonel, with the effective date an date of rank of 1 January 1990.

A Medical Evaluation Board (MEB) was convened on 20 September 1994 and their diagnosis and findings were as follows:

1. Eating disorder not otherwise specified, manifested by severe weight loss, a body weight of less than 85% of ideal body weight, with severe multi-organ system involvement and a failure to increase his weight despite medical advice to do so. S&I Impairment: Severe. Approximate date of origin 1984.

2. Chronic low back pain of discogenic origin, herniated nucleus pulposus at L 4-5, treated conservatively, with intermittent exacerbations. Approximate date of origin 1982.

The MEB recommended the case be referred to the Informal Physical Evaluation Board (IPEB) and the recommendation was approved on 20 September 1994.

On 30 September 1994, an Informal Physical Evaluation Board (IPEB) was convened. The IPEB indicated that the diagnosis of chronic low back pain was considered but not ratable. The IPEB found the applicant unfit because of physical disability and that the impairment might be permanent. The IPEB recommended temporary retirement, with a compensable rate of 70%. On 18 October 1994, the applicant agreed with the findings and recommended disposition of the IPEB.

On 9 December 1994, the applicant was relieved from active duty and on 10 December 1994, his name was placed on the Temporary Disability Retired List (TDRL) in the grade of lieutenant colonel, with a compensable percentage of 70 percent.

On 24 June 1996, the applicant was scheduled for a periodic physical (TDRL) evaluation at Scott AFB, IL. On 12 September 1996, an IPEB was convened and their diagnosis was "Eating disorder, not otherwise specified, definite industrial impairment," with the recommendation that the applicant be permanently retired, with a compensable rate of 30 percent. On 8 October 1996, the applicant disagreed with the IPEB's findings and recommendations, waived his rights to a formal hearing and elected to submit a written rebuttal to the Air Force Personnel Council (AFPC). On 31 October 1996, the Secretary of the Air Force agreed with the findings of the IPEB and directed the applicant's permanent retirement, with a 30 percent disability rating.

On 16 November 1996, the applicant's name was removed from the Temporary Disability Retired List (TDRL) and he was permanently retired in the grade of lieutenant colonel because of physical disability with a compensable rating of 30 percent. He had completed a total of 21 years and 29 days of active service for retirement and 21 years, 1 month and 14 days of service per 10 USC 1405.

The Department of Veteran's Affairs records reflect that the applicant was granted a combined rating of 80% in 1996.

AIR FORCE EVALUATION:

The AFBCMR Medical Consultant stated that the applicant served his last five years of military service with a severe eating disorder that resulted in excessive weight loss and physical disability that was thoroughly evaluated at Wilford Hall Medical Center in 1994. In October of that year, he was found unfit for duty and placed on the TDRL with 70% disability. In June 1996, he underwent a required TDRL examination, which, in retrospect, was incomplete in identifying his true medical condition. As pointed out in the letters submitted by his current treating internist and psychology provider, that examination failed to

include any laboratory tests that would have pointed to him being in much worse condition than the subsequent Physical Evaluation Board (PEB) was led to believe. When tests were performed in February 1997 (3 months post-permanently disability retired), he was found to have markedly abnormal results attributed to his severe malnutrition, conditions that were likely present at the time of his TDRL examination but not looked for. As a result of this incomplete evaluation, the PEB determined that his degree of disability was 30% the level that was granted at the time of his permanent disability retirement. The AFBCMR Medical Consultant is of the opinion that the applicant should have received a permanent disability rating of 70 percent based on the extreme nature of his disorder, the exact significance of which was lost in an incomplete evaluation and, therefore, not available to the PEB, and that this should be retroactively applied to his permanent disability retirement date of 16 November 1996. A complete copy of this evaluation is appended at Exhibit C.

The Physical Disability Division, HQ AFPC/DPPD, stated that the additional medical data provided, coupled with the comments provided by the medical advisory, make it reasonable to conclude that the applicant's TDRL evaluation may have been finalized based on incomplete medical data. Based on the additional medical information provided, DPPD recommended that the applicant be evaluated at a military medical treatment facility (Wilford Hall Medical Center) to determine his medical status at the time of his permanent disability retirement (16 November 1996). DPPD also recommended that future recommendations and disability ratings would be contingent upon the findings of the medical evaluation. A complete copy of this evaluation is appended at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant's spouse, acting on behalf of her husband, reviewed the advisory opinion and stated that the applicant is currently hospitalized at the University of Iowa as a result of his ongoing battle with anorexia and a secondary diagnosis of obsessive compulsive personality disorder, previously undiagnosed. Applicant's spouse stated that the applicant's file is filled with evaluations from various doctors who list his impairment as severe with the recommendation of 100% disability, yet he was rated at the moderate level of disability. The applicant's spouse submitted a letter written to her congressman, which summarizes the length and severity of her husband's illness and the chronology and status of the appeal. She has also submitted a copy of a letter from the applicant's civilian medical physicians concerning his mental and physical status.

The applicant's spouse, having durable power of attorney, indicated that in view of the applicant's present hospitalization and the expected length of treatment, it was requested that the

Board consider the doctor's recommendation of 70% disability rating at the time of permanent retirement in 1996 rather than a complete reevaluation before the medical board.

Complete copies of the response are appended at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. Having carefully reviewed this application, we are in agreement with the opinion and recommendation of the AFBCMR Medical Consultant and adopt his rationale as the basis for our decision that the applicant has been the victim of either an error or an injustice. In this respect, we noted that the Physical Evaluation Board's recommendation to permanently retire the applicant, with a 30% compensable disability rating, was based on incomplete medical data. We therefore agree with the Medical Consultant that the evidence pertaining to the applicant's condition supports the award of a compensable rating of 70 percent. Accordingly, we recommend that the applicant's records be corrected as indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that on 16 November 1996, competent authority determined that the rating for his unfitting condition was 70 percent, rather than 30 percent.

The following members of the Board considered this application in Executive Session on 21 July 1998, under the provisions of AFI 36-2603:

Mr. David W. Mulgrew, Panel Chair
Mr. Joseph G. Diamond, Member
Mr. Terry A. Yonkers, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 20 Jan 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFBCMR Medical Consultant, dated 12 Feb 98.
- Exhibit D. Letter, HQ AFPC/DPPD, dated 24 Mar 98.
- Exhibit E. Letter, SAF/MIBR, dated 13 Apr 98.
- Exhibit F. Letters, dated 4 May 98, w/atchs, and 11 Jun 98, w/atch.



DAVID W. MULGREW
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

SEP 16 1998

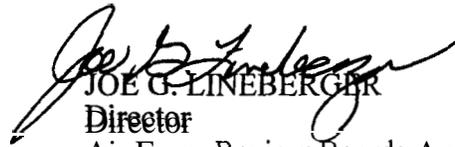
Office of the Assistant Secretary

AFBCMR 98-00224

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that on 16 November 1996, competent authority determined that the rating for his physical disability was 70 percent, rather than 30 percent.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency